

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**United States of America**

Plaintiff,

v.

**The State of Texas,**

Defendant.

Case No. 1:21-cv-00796-RP

**OPPOSED MOTION TO WITHDRAW ORDER DISMISSING CASE**

The intervenors have already served an answer, so the United States cannot dismiss this case under Rule 41(a)(1)(A)(i). *See* Dkt. Entry 28-2 (attached as Exhibit 1). The intervenors respectfully ask the Court to withdraw its order from August 29, 2022, dismissing the case under Rule 41(a)(1)(A)(i). *See* Dkt. Entry 98.

The United States opposes this motion and intends to file a response. The United States believes that the intervenors did not serve an answer within the meaning of Rule 41 because the answer was attached to their motion to intervene. The intervenors respectfully disagree with this view and contend that the answer that they served on September 22, 2021, constitutes the responsive pleading and precludes the United States from unilaterally dismissing the case under Rule 41(a)(1)(A)(i).

Respectfully submitted.

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Dated: September 5, 2022

*Counsel for Intervenors Erick Graham,  
Jeff Tuley, and Mistie Sharp*

### CERTIFICATE OF CONFERENCE

I certify that I have conferred with Daniel Winik, counsel for the United States, and he informed me that the United States opposes this motion and intends to file a written response.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Intervenor Erick Graham,  
Jeff Tuley, and Mistie Sharp*

**CERTIFICATE OF SERVICE**

I certify that on September 5, 2022, I served this document through CM/ECF upon all counsel of record in this case.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
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